

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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No. 12-10089

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UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

LARRY DEREK BLAIN,

Defendant - Appellant

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Appeal from the United States District Court for the  
Northern District of Texas  
USDC No. 3:11-CR-159-2

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Before HIGGINBOTHAM, GARZA and CLEMENT, Circuit Judges.

PER CURIAM:

Rule 4(b)(1)(A) of the Federal Rules of Appellate Procedure requires that the notice of appeal by the defendant in a criminal case be filed within fourteen days of entry of the judgment or order from which appeal is taken. In this case, the district court entered judgment on December 27, 2011. Therefore, the final day for filing a timely notice of appeal was January 10, 2012. The defendant filed a pro se notice of appeal on January 23, 2012.

Rule 4(b)(4) allows the district court to grant an additional thirty days in which to file a notice of appeal upon a finding of excusable neglect or good cause. This court customarily treats the filing of an untimely notice of appeal

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NORTHERN DISTRICT OF TEXAS  
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within the thirty-day period in a criminal case as a motion for a determination whether the defendant is entitled to an extension of time to appeal. *United States v. Golding*, 739 F.2d 183, 184 (5th Cir. 1984) (per curiam). Because the defendant's notice of appeal was filed within the thirty-day period, we remand the case to the district court for a determination whether the untimely filing of the notice of appeal was due to excusable neglect or good cause. Upon making this determination the district court shall return the case to this court for appropriate action.

IT IS SO ORDERED.

**United States Court of Appeals**  
FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

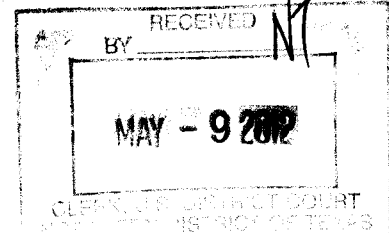
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May 03, 2012

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 12-10089 USA v. Larry Blain  
USDC No. 3:11-CR-159-2

Enclosed is an order entered in this case.



Sincerely,

LYLE W. CAYCE, Clerk

By: 

Steve A. Totor, Deputy Clerk  
504-310-7667

Mr. David Michael Finn  
Ms. Nancy E. Larson  
Ms. Karen S. Mitchell